

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GREENWICH INSURANCE
COMPANY, a Delaware Corporation,

Plaintiff,

v.

GOODWIN & THYNE PROPERTIES,
INC.

Defendant

and

WILLIAM P. PAXSON,

Necessary Party Defendant

Case No.: CV 15-4426-GW(JCx)

**JUDGMENT GRANTING
GREENWICH INSURANCE
COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

Action Filed: June 11, 2015

JUDGE: Hon. George H. Wu

CTRM: 10

DATE: October 3, 2016

Pursuant to "Greenwich Insurance Company's Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56" submitted by Plaintiff Greenwich Insurance Company and signed by the attorneys of record for the parties of the above-entitled action, the court's ruling pursuant to the status conference held on October 6, 2016, and good cause appearing therefore, IT IS HEREBY ORDERED THAT:

1. Pursuant to Fed. R. Civ. P. 56, summary judgment is granted in favor of Greenwich Insurance Company on Count I of Greenwich's Complaint, finding that the prior knowledge provision of the Insuring Agreement of Greenwich Policy

1 No. PEG9168643-1, with a Policy Period of May 28, 2014 to May 28, 2015
2 precludes coverage for Goodwin & Thyne Properties, Inc., and all of its
3 employees, agents and representatives, for the entire litigation captioned *William*
4 *P. Paxson v. John J. Thyne, III, et al.*, designated Case No. 1469428 (“Paxson
5 Complaint”).

6 2. Pursuant to Fed. R. Civ. P. 56, summary judgment is granted in favor
7 of Greenwich Insurance Company on Counts VIII and IX, finding that because
8 coverage for the entire Paxson Complaint is precluded, Greenwich is entitled to
9 reimbursement of all defense fee payments made in connection with the Paxson
10 Complaint, on behalf of Goodwin & Thyne Properties, Inc., or any of its
11 employees, agents and representatives.

12 3. Pursuant to Fed. R. Civ. P. 41(a)(2), Counts II, III, IV, V, VI and VII
13 of Greenwich’s Complaint are hereby dismissed without prejudice as moot.

14 4. As of October 5, 2016, Greenwich Insurance Company paid
15 \$5,165.05 in the form of defense fee payments made in connection with the Paxson
16 Complaint, on behalf of Goodwin & Thyne Properties, Inc., or any of its
17 employees, agents and representatives. *See* Declaration of Lionel Santos, Dkt. No.
18 64.

19 5. Based on the foregoing, Greenwich is entitled to reimbursement of the
20 entire amount of \$5,165.05 in the form of defense fee payments made in
21 connection with the Paxson Complaint, on behalf of Goodwin & Thyne Properties,
22 Inc., or any of its employees, agents and representatives.

23 6. Pursuant to Fed. R. Civ. P. 56, summary judgment is granted in favor
24 of Greenwich Insurance Company, finding that because coverage for the Paxson
25 Complaint is precluded, Greenwich is entitled to prejudgment interest on
26 reimbursement of defense fee payments made in connection with the Paxson
27 Complaint, on behalf of Goodwin & Thyne Properties, Inc., or any of its
28 employees, agents and representatives at a rate of 10% per annum from the date the

1 claim arose. Cal. Civ. Code § 3287(a).

2 7. Based on the foregoing, as of October 5, 2016, Greenwich Insurance
3 Company is entitled to prejudgment interest at 10% on date each invoice was paid
4 in connection with the \$5,165.05 principal.

5 8. Based on the aforementioned prejudgment interest rate, Greenwich
6 Insurance Company is entitled to a total of \$559.78 in prejudgment interest, as of
7 October 5, 2016. This amount continues to accrue prejudgment interest each day it
8 remains unpaid. *See* attached as **Exhibit 1**.

9 9. Pursuant to Fed. R. Civ. P. 56, summary judgment is granted in favor
10 of Greenwich Insurance Company, finding that because coverage for the Paxson
11 Complaint is precluded, Greenwich is entitled to post-judgment interest on
12 reimbursement of defense fee payments made in connection with the Paxson
13 Complaint, on behalf of Goodwin & Thyne Properties, Inc., or any of its
14 employees, agents and representatives at a rate that is the weekly average one-year
15 constant maturity Treasury yield for the calendar week preceding the date of the
16 entry of judgment.

17 10. Based on the foregoing, as of October 5, 2016, Greenwich Insurance
18 Company is entitled to post judgment interest at 0.46% on the \$5,165.05 principal
19 for eighty-three (83) days, resulting in post judgment interest of \$5.40. This
20 amount continues to accrue post judgment interest each day it remains unpaid.

21 11. In total, a judgment is entered against Defendant Goodwin & Thyne
22 Properties, Inc. and in favor of Greenwich Insurance Company for an amount of
23 \$5,730.23.

24 12. Defendants are, and remain, responsible for the payment of all past,
25 present and future outstanding, unpaid or accrued defense costs or invoices in
26 connection with the Paxson Complaint, including any invoice which would
27 constitute or comprise the Insureds' \$10,000 deductible under the Greenwich
28 Policy. Greenwich has no further responsibility for the payment of any past,

1 present and future outstanding, unpaid or accrued defense costs or invoices in
2 connection with the Paxson Complaint.

3 13. The United States District Judge shall retain jurisdiction over all
4 disputes between and among the parties arising out of the Judgment; and

5 14. Each party shall bear his or its own costs and attorneys' fees.

6 **IT IS SO ORDERED.**

7
8 Dated: October 7, 2016


By: 
Hon. George H. Wu
United States District Judge

EXHIBIT 1

**UNITED STATES DISTRICT COURT
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GREENWICH INSURANCE
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Case No.: 2:15-CV-4426 GW

**GREENWICH INSURANCE
COMPANY PREJUDGMENT
INTEREST CALCULATION**

Action Filed: June 11, 2015

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PAYMENT NUMBER	PAYEE	DATE POSTED	AMOUNT PAID	DAYS FROM PAYMENT TO OCTOBER 5, 2016
1	Nemecek and Cole	11/19/2015	\$451.40	322 days
2	Spile, Siegal, Leff	12/10/2015	\$253.50	301 days
3	Nemecek and Cole	12/18/2015	\$399.10	293 days
4	Nemecek and Cole	01/27/2016	\$1,921.00	253 days
5	Nemecek and Cole	03/16/2016	\$1,598.55	204 days
6	Nemecek and Cole	04/20/2016	\$541.50	169 days
			TOTAL: \$5,165.05	

****Pursuant to relevant California law (Cal. Civil Code §§ 3287(a) and 3289), prejudgment interest is calculated from the date of payment at a rate of 10% per annum. The defense payments at issue in this matter were made at various times as indicated above. Therefore, the prejudgment interest calculation takes into account the number of days each payment (or combined payments) were outstanding.**

In connection with the foregoing, the next page illustrates the calculations in connection with the chart above. For example, "Payment No. 1" above was paid 322 days ago, while "Payment No. 2" above was made 301 days ago. Pursuant to California law, prejudgment interest began to run on "Payment No. 1" on November 19, 2015. Moreover, when "Payment No. 2" was made on December 10, 2015, prejudgment interest began to run on the sum of "Payment No. 1" and "Payment No. 2." Following this structure, when "Payment No. 3" was made on December 18, 2015, prejudgment interest began to run on the sum of "Payment No. 1", "Payment No. 2" and "Payment No. 3." This calculation continued until the last payment by Greenwich on April 20, 2016, at which time prejudgment interest began to run on the entire amount of \$5,165.05. The calculations are set forth in more detail on the next page, however, the full prejudgment interest amount is **\$559.78**.

PREJUDGMENT INTEREST CALCULATIONS AT RATE OF 10%

1. \$451.40 – 21 days
 - a. $451.40 \times 10\% = \$45.14/365 = 0.124/\text{day}$
 - b. $0.124 \times 21 \text{ days} = \2.59
 - c. Prejudgment Interest – \$2.59
2. \$704.90 – 29 days
 - a. $\$451.40 + 253.50 = \704.90
 - b. $704.9 \times 10\% = \$70.49/365 = 0.193/\text{day}$
 - c. $0.193 \times 29 \text{ days} = \5.60
 - d. Prejudgment Interest – \$5.60
3. \$1,104.00 – 69 days
 - a. $\$704.90 + \$399.10 = \$1,104.00$
 - b. $1,104.00 \times 10\% = \$110.40/365 = 0.302/\text{day}$
 - c. $0.302 \times 69 \text{ days} = \20.84
 - d. Prejudgment Interest – \$20.84
4. \$3,025.00 – 118 days
 - a. $\$1,104.00 + \$1,921.00 = \$3,025.00$
 - b. $3,025.00 \times 10\% = \$302.50/365 = 0.829/\text{day}$
 - c. $0.829 \times 118 \text{ days} = \97.79
 - d. Prejudgment Interest – \$97.79
5. \$4,623.55 – 153 days
 - a. $\$3,025.00 + \$1,598.55 = \$4,623.55$
 - b. $4,623.55 \times 10\% = \$462.355/365 = 1.267/\text{day}$
 - c. $1.267 \times 153 \text{ days} = \193.81
 - d. Prejudgment Interest – \$193.81
6. \$5,165.05 – 169 days
 - a. $5,165.05 \times 10\% = \$516.505/365 = 1.42/\text{day}$
 - b. $1.42 \times 21 \text{ days} = \239.15
 - c. Prejudgment Interest – \$239.15
7. TOTAL – \$559.78